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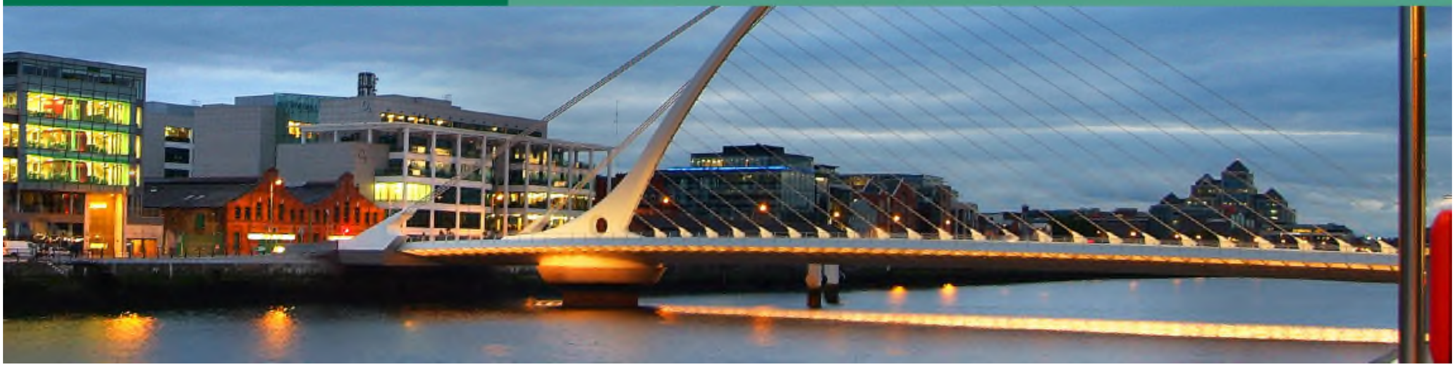

August 2019

Central Bank revises certification regime for UCITS investing in financial indices

Background

In October of 2018, the Central Bank published new guidance in which it confirmed that it would no longer require certain financial indices to be submitted for review prior to a UCITS fund investing in such financial indices. In place of this, a UCITS management company (including a self-managed UCITS fund) was required to provide a written certification to the Central Bank confirming that the financial index to be invested in by the relevant UCITS fund complied with applicable rules set down in the UCITS Regulations, the Central Bank UCITS Regulations and applicable Central Bank web-based guidance. The Central Bank required that this certification be provided in support of the application for approval of the UCITS fund by the Central Bank in respect of all financial indices "identified" for investment on behalf of the UCITS fund at that time. However, this certification was also required to be provided to the Central Bank on an ongoing basis each time it was proposed that a UCITS fund invest in a new financial index.

In July 2019, the Central Bank published updated Guidance on the use of financial indices by UCITS funds and revised its requirements in relation to the certification regime.

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Revised certification regime

In what circumstances is a certification letter now required?

The Central Bank has now helpfully revised its guidance to provide that a certification from a UCITS management company is only required in the following circumstances:

(i) where the financial index is comprised of ineligible assets (i.e. any assets which a UCITS fund cannot invest in directly under the UCITS rules); or

(ii) where on a "look through" basis, it would not be possible for a UCITS fund to directly invest in the constituents of the financial index without transgressing the risk-spreading limits of the UCITS Regulations (e.g. where the weightings of the constituents of the relevant financial index comprised of transferable securities do not meet the 5/10/40 rule).

Are there any other requirements to be met where a financial index does not fall within the certification regime?

Where a financial index does not fall within the certification regime outlined at (i) and (ii) above, the Central Bank requires that a confirmation be provided to it in support of the application for authorisation of the relevant UCITS fund stating that such financial index meets the applicable regulatory requirements, as in the absence of such a statement, the Central Bank may query the use of the financial index and request relevant certification.

Where certification is not required because on a "look through" basis it would be possible for a UCITS fund to directly invest in the constituents of the financial index without transgressing the risk-spreading limits of the UCITS Regulations, the Central Bank clarifies that if over time, market movements or other events cause the weightings of the financial index to change so that the financial index no longer complies with the "5/10/40" rule, the financial index will be deemed to continue to meet financial index regulatory criteria provided the authorisation / post-authorisation application of the UCITS fund stated that such financial index met the applicable regulatory requirements.

Due diligence on financial indices

Irrespective of whether written certification is or is not required to be provided to the Central Bank, a UCITS management company must carry out pursuant to the CBI UCITS Regulations documented due diligence on each financial index prior to investment by a UCITS fund and be satisfied that the relevant financial index meets all regulatory requirements.

Should you have any queries in relation to this article, please contact the author or your usual contact in the Dillon Eustace Asset Management and Investment Funds Team for further information.

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